

Exhibit 2

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EUROPEAN COMMUNITY,

Plaintiff,

v.

RJR NABISCO, INC., *et al.*,

Defendants.

00 Civ. 6617 (NGG/VVP)

DEPARTMENT OF AMAZONAS, *et al.*,

Plaintiffs,

v.

PHILIP MORRIS COMPANIES INC., *et al.*,

Defendants.

00 Civ. 2881 (NGG/VVP)

00 Civ. 3857 (NGG/VVP)

00 Civ. 4530 (NGG/VVP)

(Consolidated)

**DEFENDANTS' JOINT MEMORANDUM OF LAW IN SUPPORT OF MOTION
TO DISMISS UNDER RULE 12(B)(6) THE COLOMBIAN AND EUROPEAN
COMMUNITY COMPLAINTS FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF CAN BE GRANTED**

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Second, there is no diversity jurisdiction over plaintiffs' state law claims because complete diversity is lacking. The Second Circuit has long recognized the "explicit and unequivocal" rule requiring complete diversity, and dismisses actions when aliens are on both sides of a matter. *See, e.g., Corporacion Venezolana de Fomento v. Vintero Sales Corp.*, 629 F.2d 786, 790 (2d Cir. 1980) ("[T]he presence of aliens on two sides of a case destroys diversity jurisdiction."); *accord Franceskin v. Credit Suisse*, 214 F.3d 253, 258 (2d Cir. 2000) (following *Corporacion Venezolana*); *International Shipping Co. v. Hydra Offshore, Inc.*, 875 F.2d 388, 391 (2d Cir. 1989) (same). In both the Colombian and EC Actions there are aliens on both sides. (Colom. 2d Am. Compl. ¶¶ 16, 17, 21; EC Compl. ¶ 14.) That destroys diversity jurisdiction.

Third, the All Writs Act does not confer an independent basis of jurisdiction. *See Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999) ("[T]he express terms of the [All Writs] Act confine the power of the [court] to issuing process 'in aid of' its existing statutory jurisdiction; the Act does not enlarge that jurisdiction."); *Collins v. United States*, No. 99 Civ. 6717, 2000 WL 516892, at *5 (E.D.N.Y. Mar. 8, 2000) (The All Writs Act "does not confer independent jurisdiction on a federal court. It only supplements the express powers of a court in cases in which jurisdiction already exists."). Here, there is no jurisdiction to supplement under the All Writs Act. Thus, there is no basis for jurisdiction over plaintiffs' state law claims.

(footnote continued from previous page)

causation grounds as RICO counts); *Marcus v. AT&T Corp.*, 138 F.3d 46, 63-64 (2d Cir. 1998) (dismissing pendent claims for fraud, negligent misrepresentation and unjust enrichment).